

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Amendment of Parts 73 and 74 of the	)	MB Docket No. 03-185
Commission's Rules to Establish Rules for Digital	)	
Low Power Television, Television Translator,	)	
and Television Booster Stations and to Amend	)	
Rules for Digital Class A Television Stations	)	

**OPPOSITION TO MOTION FOR STAY**

Verizon Wireless hereby opposes The National Translator Association's ("NTA") Motion for Stay of the effectiveness of paragraphs 23 through 35 of the Second Report and Order, FCC 11-110, released July 15, 2011, in the above captioned proceeding ("Order"). As Verizon Wireless explained in its comments in this docket, the establishment of a specific termination date for Low Power Television ("LPTV") service is necessary to promote the rapid deployment of broadband wireless services such as its 4G LTE network. NTA's suggestion that the public interest is not harmed by continuing the current notification process fails to consider the public interest benefits of cleared spectrum to public safety agencies deploying systems on the same frequencies, nor does it address the harms to commercial entities like Verizon Wireless, which have already begun using its 700 MHz spectrum to provide 4G LTE and plans to overlay its entire 3G network with LTE by the end of 2013. We urge the Commission to deny the Motion for Stay.

### **Standard of Review of a Motion for Stay**

Before the Commission will grant a stay of an order, a petitioner must demonstrate that it is likely to prevail on the merits of its petition for review, that it will suffer irreparable harm in the absence of a stay, that a stay will not injure other parties, and that a stay is in the public interest.<sup>1</sup> Contrary to NTA's claim, it cannot demonstrate that it satisfies a single one of these prongs, let alone all four. The Commission has already properly rejected arguments that would leave in place the current process, which places the burden of notification and coordination on 700 MHz licensees. Moreover, both the public and new entrants in the broadband marketplace would be harmed by a stay.

#### NTA is Unlikely to Succeed on the Merits.

In an effort to show a likelihood of prevailing on the merits, NTA argues that there is not sufficient time to meet the deadline. Similar arguments were raised in the comment cycle; they all ignore the fact that LPTV stations have been on notice for more than five years that they would need to move out of the 700 MHz band. As the *Further Notice* details, in 2004, the FCC allowed LPTV stations to continue to operate in channels 52-69 temporarily, on a secondary basis, and established procedures to "ensure that such facilities could be quickly 'cleared' when new 700 MHz licensees were ready to begin operations."<sup>2</sup> Since commercial operators have made significant progress in deploying their networks and have begun to provide service to customers, the *Further Notice* concludes that "it is now appropriate that the 700 MHz band be cleared of low power television broadcasters, both analog and digital, by a specific date so that

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<sup>1</sup> See *In re Regulation of Prepaid Calling Card Svcs.*, 22 FCC Rcd. 5652, ¶ 7 (2007); see also *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958); *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 59 F.2d 841, 843 (D.C. Cir. 1977).

<sup>2</sup> Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, *Further Notice of Proposed Rulemaking and Memorandum Opinion and Order*, MB Docket No. 03-185, 25 FCC Rcd 13833 (2010) ("Further Notice") at ¶¶ 20-21.

new commercial wireless and public safety entities can continue to deploy their services.”<sup>3</sup> The motion fails to demonstrate why the Commission’s findings were incorrect. Moreover, it would be inequitable to allow dilatory LPTV station licensees to further delay the unhindered deployment of broadband services in the 700 MHz.

NTA’s Members Will Not Suffer Irreparable Injury.

NTA fails to show that its members will suffer irreparable injuries. First it suggests that hundreds of translator stations will not meet the September 1 deadline for filing relocation applications and thus could not meet the December 31, 2011 deadline to cease broadcasting in the 700 MHz band. As discussed above, LPTV licensee have been on notice for over five years that they would need to cease operations yet most have taken no steps to relocate. LPTV licensees’ failure to make prudent decisions with respect to seeking new station authorizations –a situation of their own making- does not satisfy the irreparable injury test. Second, contrary to NTA’s assertion, it is not “economic conditions” that are inhibiting deployment of broadband services in the 700 MHz,<sup>4</sup> Verizon Wireless has already deployed the largest LTE network in the world and is committed to expansion, but that expansion would be impaired if the FCC removes regulatory hurdles such as incumbent LPTV licensees from its spectrum.

A Stay Will Harm Other Interests

Contrary to NTA’s assertion, a stay will cause harm to current and prospective users of the spectrum. Here too, NTA suggests that the current process takes nothing more than a 120 day notice to an incumbent translator to clear LPTV licensees. This is not the case, because LPTV licensees are not required to cease operations upon receipt of a 120 day notification from a wireless carrier unless the wireless carrier is able to prove harmful interference. It has been

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<sup>3</sup> *Id.* at ¶ 20.

<sup>4</sup> NTA Motion for Stay at p. 4.

Verizon Wireless' experience that some LPTV licensees will not accept Verizon Wireless' assessment of interference and have requested extensions and or additional engineering evidence that further delay and increase the cost of commercial deployment. Despite these burdens, Verizon Wireless has generously extended its cessation of operation deadlines on several occasions. Further, some LPTV licensees are operating on frequencies other than those that are listed in the FCC's licensing records or at addresses or contact numbers that are outdated, making it difficult for licensees to initiate contact with LPTV licensees. These issues make the current process less effective in some circumstances and illustrate the need for all LPTV licensees to cease operations by December 31, 2011. Finally, NTA's description of the current process as "very workable", asserting that LPTV licensees should be permitted to operate until they cause interference to 700 MHz operations,<sup>5</sup> ignore the serious potential harms to public safety communications from not requiring a relocation deadline as soon as possible. As the National Public Safety Telecommunications Council ("NPSTC")<sup>6</sup> notes, a date certain for clearing is necessary to make the 700 MHz band spectrum fully available for public safety operations use throughout the country.

The Public Interest in LPTV Operations Will Not be Harmed.

Concerns that consumers will be negatively impacted are overstated and not supported with specific data. As National Public Radio, Inc. ("NPR") noted in the comment cycle in this proceeding, "With the completion of the full power digital transition on June 12, 2009, the

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<sup>5</sup> Motion for Stay at p. 3.

<sup>6</sup> The following 15 organizations participate in NPSTC: American Association of State Highway and Transportation Officials; American Radio Relay League; Association of Fish and Wildlife Agencies; Association of Public-Safety Communications Officials-International; Forestry Conservation Communications Association; International Association of Chiefs of Police; International Association of Emergency Managers; International Association of Fire Chiefs; International Municipal Signal Association; National Association of State Chief Information Officers; National Association of State Emergency Medical Services Officials; National Association of State Foresters; National Association of State Technology Directors; National Emergency Number Association; and the National Sheriffs' Association.

principal obstacle to a low power television digital transition . . . has now been eliminated. Digital television receivers and analog converters are now in place so that the public is fully capable of viewing over-the-air digital television.”<sup>7</sup>

### Conclusion

For the reasons discussed above, the Commission must deny NTA’s Motion for Stay.

Respectfully submitted,

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style with a horizontal line underneath the name.

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<sup>7</sup> See Comments of NPR at page 2.

**Certificate of Service**

I hereby certify that on this 28<sup>th</sup> day of July copies of the foregoing “Opposition to Motion for Stay” in MB Docket No. 03-185 were sent by US Mail to the following parties:

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/s/  
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